

## CONSULTATION on IUCN’s draft policy on biodiversity offsets

### Comments from the Environment and Conservation Organisations of NZ Inc

The consultation is open **until 15 September 2015**. Please use the comment form and submit your comments via email to [rachel.asante-owusu@iucn.org](mailto:rachel.asante-owusu@iucn.org) and [steve.edwards@iucn.org](mailto:steve.edwards@iucn.org). In view of the expected number of comments, we may not be able to respond to each comment individually. Following the end of the public consultation period, we will make all comments publicly available from the IUCN website, [www.iucn.org/offsets](http://www.iucn.org/offsets).

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#	OVERARCHING COMMENTS ON THE DRAFT TEXT
1	<p>ECO welcomes this consultation, is very grateful for the work behind it and the Technical Paper and the Draft Policy on Biodiversity Offsets. We have had the benefit of an IUCN NZ Committee - ECO NZ organized workshop at which the policy was critiqued and at which the Department of Conservation NZ, various scholars who have worked on examining biodiversity offsets in practice, and experienced ENGO people examined the IUCN policy and New Zealand practice and experience elsewhere.</p>
2	<p>A core problem with this policy is that it hinges around judgments as to whether the activity is</p> <ol style="list-style-type: none"> <li>a) likely to occur anyway, so that the introduction of best practice offsets improves the situation as it stands and can, by imposing the hierarchy, stringent conditions and limits as to where an what can be offset, can give protection while limiting “trades”;</li> <li>b) whether the biodiversity damaging activity is sensitive to the requirement to in effect, internalize costs by providing offsets;</li> <li>c) whether by providing offsets, there will be greater willingness by authorities to allow damage to biodiversity so that the net impact is higher losses of biodiversity.</li> </ol> <p>Walker, et al (2009) state in <i>Conservation Letters</i>, “biodiversity is not fungible, the definition of “currency” of trade is difficult and costly, the pressures on officials and agencies and the interests of those who seek biodiversity offsets as a passport to development are such that there will always be government failures such that standards will relax, concessions will be given and enforcement will be absent”. (<a href="http://onlinelibrary.wiley.com/helicon.vuw.ac.nz/doi/10.1111/j.1755-263X.2009.00061.x/epdf">\http://onlinelibrary.wiley.com/helicon.vuw.ac.nz/doi/10.1111/j.1755-263X.2009.00061.x/epdf</a>.)</p> <p>We note and agree with the statement on p10 of the IUCN Biodiversity Offsets Technical Study Paper (2014) that “biodiversity offsets have the potential to provide net gains in biodiversity in the right context, but this has rarely yet been realized in practice..”</p>

	<p>We wonder if there may be a distinction to be had from the use of offsets by those who do so in order to gain some extra benefit such as certification or accreditation but who already have rights or permits to do what they are doing, compared with the use of offsets as a basis for gaining permission to embark on harmful activities? That distinction may then provide an incentive to protect biodiversity without any concomitant extra right to damage it.</p> <p>If that were implemented, then the moral hazard of allowing extra harm would be avoided, and the passport effect – or as the IUCN Technical Paper has it, the “licence to trash” would be avoided. Such a rule would not address how the existing rights were obtained and what these are, but it would at least help to hold the baseline and to encourage improvement.</p> <p>If the situation is either that the activity is as in a) and b) above, that is, bound to occur anyway, or able to be influenced to reduce the amount of biodiversity harm by being otherwise required to off set harms, then the kinds of policies suggested in the IUCN paper provide the basis for best practice.</p> <p>If such policies are adopted, then we would like the provisions to be strengthened, as discussed below, with stricter provision for “off limits” protected areas, limits on the impacts allowed, and stronger provision of particular mechanisms for achieving the goals discussed.</p> <p>If the situation is as in “c”, with biodiversity offsetting allowing the erosion of existing protections and allowing more biodiversity loss, then we cannot support off setting.</p> <p>We find ourselves caught between these difficulties: the imperfect world where biodiversity is lost with no compensation or protection of other vulnerable biodiversity from other threats, or the imperfect world where there is a pretence that biodiversity losses are offset with strict applications of controls that are actually often poorly designed, poorly enforced, short term and ineffective and which serve to provide the illusion of biodiversity protection.</p> <p>On the basis of the situations in a) and b) above, we agree with much of the proposed policy, but we think it could be strengthened and we note these points below.</p> <p>We suggest that the policy proposal is to not, at this stage, endorse the use of biodiversity offsets, since there is little evidence that they are effective and many case studies of failures. There is a risk that they are counterproductive, and, as the IUCN technical paper notes, there is potentially high risk to biodiversity. So instead of endorsing biodiversity offsets, we recommend that IUCN note their use, define the difficulties, foster or do more research on them and the conditions under which they do and do not work well, and then provide the proposed policy as a best practice guide and some “do nots”.</p> <p>We recommend that there be more information given on the design and implementation of specific measures to achieve the various conditions proposed. Examples might include the provisions of up-front bonds, provision of the biodiversity protection prior to any grants of permits, durable institutional forms, and so on. We make a few suggestions in the specific sections further down this response.</p> <p>ECO considers that the conditions proposed should be strengthened by requirements that each state or region should apply offsetting within the framework of the Achi Targets and in a National and Regional Biodiversity Strategy to achieve these. The intent would be to ensure that money or actions from offsetting would improve and progress of biodiversity protection over and above national Commitments. Exceptions to this approach should only be in nation states manifestly unable to meet Archi Targets by any other means.</p> <p>In further strengthening the conditions we suggest mandatory requirements of national -level policy to guide decision making monitoring on a local and national level, which should in turn require strict outcome-oriented conditions and monitoring, compliance and enforcement.</p>
3	<p>In the Technical Paper, there is reference to “intrinsic value” and this is primarily equated as social values. (E.g. but not limited to, row 2, col 3 p42).</p>

	In the literature, “intrinsic value” is usually used to indicate values that are regarded as inhering in a thing (creature, species, ecosystem) and for many that this suggests it has ethical standing in its own right, distinct from benefit to people. This is distinguished from instrumental value, which covers extractive and other uses and passive uses that benefit people. Instrumental value includes extractive and in situ uses, existence value, option value and bequest value – all of which reflect benefits to people. Intrinsic value is regarded as value we recognize as value in and of itself, not value to external agents such as people. By way of analogy, we regard people as having intrinsic value – hence ethical standing – that is distinct from their value to others for the host of benefits or work that they may provide to others.
4	A research agenda can be developed from the useful discussion in the Technical Paper and the Appendix 1 of that paper – and it would be good to see that drawn out and the subject of further work – which could be done as a series of thesis topics to draw in the young to these discussions.
5	To make it easier for people responding to papers for comments, we request that IUCN adopt a protocol of providing documents in word format, not only in pdf, AND that IUCN ensure that lists are numbered, rather than bullet points, so that we can easily reference points made in papers rather than having to count bullet points – E.g., the bullet points on pages 2-6 of the Technical Paper.  We commend the presentation of the policy paper with line numbers – that does help a lot.
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Line no.	COMMENTS ON SPECIFIC SECTIONS
1-7	<p>Purpose Statement:</p> <p>This Purpose statement assumes that Biodiversity offsets should be used and that the discussion is how to design them and their limits of application. The paper, having assumed that they should be used, then develops conditions for a world where they could be implemented under various conditions. This rather begs the question of whether biodiversity offsets do more harm than good, and whether IUCN should endorse them – though the Technical Paper and the policy proposal itself are far more cautious than the purpose statement.</p> <p>We suggest that the Purpose be more diffident – that we recognize that the evidence is sparse on whether biodiversity offsets really do, or can, off set biodiversity losses, but that IUCN also recognizes that they are widely used, so this policy aims to provide best practice guidelines and some “do not do’s”.</p>
16-19	<p>Scope of Policy</p> <p>This paper is mostly about biodiversity offsets, and says little about the implementation and design</p>

	<p>of “related compensatory approaches”.</p> <p>There is little about the social and participatory processes that might be used.</p>
30-32	<p>Policy Statement: We worry that the conditions proposed, though generally well considered and framed, are so unlikely to prevail as to offer false hope.</p> <p>The systemic problems of non-substitutability and non-fungibility of biodiversity, of endemic human and government failures<sup>1</sup> such as short-termism, the “Special Interest Effect”<sup>2</sup>, Regulator capture by industry, goal displacement, specification problems, institutional design and durability problems and much more, make the conditions and world offered unlikely to be given effect.</p>
34-43	<p>We agree with these statements and especially that “they could pose a significant risk to biodiversity that outweighs any benefit that may be gained”.</p> <p>We think it highly unlikely that the conditions and hierarchies will be observed, hence we conclude that these are a considerable risk.</p> <p>Some discussion was warranted here about the extent and dynamics of this risk, and especially of the assumptions of tradability of biodiversity.</p> <p>The central issue is this: do biodiversity offsets make biodiversity losses greater or less? This in turn raises the question of whether the “passport effect” of legitimizing biodiversity damaging activities will enable biodiversity harming activity and dismantle norms of durability of protected areas.</p> <p>The discussion in these lines should address the crucial issues of whether and how the conditions in lines 39-43 could be achieved, and if so, what institutions, instruments and rules would achieve them. More specifics are needed.</p>
45-59	<p>As a guide to the use of offsets, if they are to be used, then we agree that the <b>mitigation hierarchy</b> should be applied stringently. Within the rational-comprehensive world posited, the proposed conditions and caveats make good sense, we think it so unlikely that they will be that it is misleading to offer this as a solution.</p> <p>There is a very substantial literature on government failures which should be considered in relation to these proposals.</p> <p>In terms of No Net loss and Net gain, measurement must be in separated accounts with respect to species composition, habitat structure, ecosystem function and people’s use and cultural values associated with biodiversity (Source: BBOP (2012a). Economic gain must not be allowed to be at the expense of biodiversity loss.</p>

<sup>1</sup> Dolfsma, Wilfred (2013) Government Failure; society, markets and rules, Elgar, ebook isbn 978 1 78254 716 7; Connolly, Sara and Alistair Munro (1999) Economics of the Public Sector, Prentice Hall Europe, London.]

<sup>2</sup> The special interest effect is where projects or policies that benefit a few a lot but harm many a little are adopted because the many remain in “rational ignorance” because the costs of finding out about the project are higher to them than the harm to them. The few who stand to gain a lot pressure decision makers to push the project or policy through. The decision makers (eg politicians) loose nothing from the many and may gain (eg votes or bribes) from the benefiting few.

69-70	<p>Biodiversity offsets assume fungibility or perfect - or adequate - substitutability of exchange of biodiversity. If that condition does not hold for biodiversity trades, then we suggest that what is being called biodiversity offsets are actually compensations for losses of biodiversity. It would be better to make that clear and to include that term in lines 69-70 and elsewhere throughout the document.</p>
75	<p>Although IUCN has adopted a rights-based approach, we consider this inadequate and profoundly limiting. Rights-based approaches can easily elevate human claims and entrenchment of the status quo at the expense of the environment, the future and the functionality and health of ecosystems and biophysical systems (such as ocean and cryosphere dynamics and health, climate and so on). In New Zealand there is a discussion of how a “responsibility approach” may provide a sounder basis for actions and policies, while also recognizing indigenous community concerns.</p>
76-77	<p>This discussion would be much more convincing if the paper provided specific legal, institutional and financial measures and tested these against the conditions for effectiveness, durability, resilience to changes and to perverse incentives, adjustability in the light of changed conditions (corporate and governmental changes, changes from the environment, etc.) and other relevant criteria for policy instrument assessment.</p> <p>Such measures could include the provision of money to provide a perpetual sources of income to maintain the conditions for off set maintenance, e.g. for weed and pest control; the provision for firms and their principals to retain joint and several liability in perpetuity with no opportunity to relinquish the obligation or the legal form that binds them to it; up-front bonds updated regularly but with the funds ring-fenced in perpetual financial instruments and in the provision in advance of bonds held by the authorities.</p>
Lines 81-118	<p>We would agree with the discussion as a discussion of good practice. We worry though that it is a dream world that does not match the reality of experience or of the theories of government failure.</p>
120 -140	<p>Limits to biodiversity offsets: The first bullet point is notable for its low ambition. We agree that this is necessary but it is very far from sufficient and is likely to be adopted as a grounds for authorizing activities and impacts so long as nothing is made extinct.</p> <p>We consider that the test must be at the VERY LEAST, that there is no impact on the health and functioning of the species, communities and ecosystems affected, AND that there be minimum viable populations. On its own, lack of extinctions as a biodiversity standard is FAR too low. Other more appropriate test would be that the activity does not further threaten a threatened species or more it to a more threatened status, E.g. from vulnerable to endangered.</p> <p>WE suggest Offsets should not be used at anytime in areas of high biodiversity such as Key Biodiversity Areas, KBA, or cultural value s or protected areas ( including those other than with IUCN ranking).</p> <p>Offsets should be determined by independent qualified professionals with community participation.</p>
131-132	<p>In New Zealand the indigenous Maori have complex kinship and responsibility relations to place and its components, so substitutability will rarely be acceptable. Offsets should not be used</p>

	without the Free Prior and informed Consent of indigenous and cultural local groups.
138-140	This should state that offsets are not acceptable in the World Heritage sites, and in IUCN categories for protected areas 1-1V, as well as other specified areas.
156 and following lines	<p>Key elements of biodiversity offsets.</p> <p> Tempting as it is to imagine that there are units of exchange, the fundamental assumption of fungibility and tradability, implies there is full substitutability, no irreversibility and that like can be replaced by like. Given that these assumptions are unsound, they not only undercut the foundations of the policy of offsetting, but they entrench a false epistemology that biodiversity is substitutable. The former is bad enough, the latter undercuts truth and legitimizes illegitimate actions, and encourages further biodiversity losses by undermining the basis for objection to biodiversity losses. The passport effect allows further damage.</p> <p>The paper relies on a “single round game” approach, where only one project is under consideration (albeit there are cautions to use seascape and landscape wide spatial planning etc.). The approach might work if we were in a single round game, but we are not. The dynamic impacts of the policy in encouraging harm must be considered and this is where it fails. If a project were inevitable, then the approach might be justified, but it is not – damaging projects are encouraged by off setting.</p> <p>The paper also assumes that decision making is comprehensive and rational and made by a single mind and agency in complete command of what happens. None of that is true.</p>
	<p>As we said in our overarching comments point 6, We wonder if there may be a distinction to be had from the use of offsets by those who do so in order to gain some extra benefit, such as certification or accreditation, but who already have rights or permits to do what they are doing, compared with the use of offsets as a basis of permission to embark on harmful activities? That distinction may then provide an incentive to protect biodiversity without any concomitant extra right to damage it.</p> <p>If that were implemented, then the moral hazard of allowing extra harm would be avoided, and the passport effect – or as the Technical Paper has it, “licence to trash” would be avoided. Such a rule would not address how the existing rights were obtained and what these are, but it would at least help to hold the baseline and to encourage improvement.</p>
197-201	We agree that national policies should be designed to move away from off-setting.
202 and following	<p>Timeframes</p> <p>We agree that the timeframe should be in perpetuity – since that is likely to be the duration of the biodiversity loss. The impossibility of ensuring the offset will endure in perpetuity should indicate the fragility of any offsetting policy.</p> <p>Such recommendations for in perpetuity off sets should provide some actual mechanisms for providing this, if it is to be offered as a solution.</p> <p>We agree with many of the points made in succeeding sections on uncertainty, on monitoring, evaluation and enforcement, and governance and permanence, BUT while we agree with many of the sentiments, we do not see that the recommendations are achievable. If the policy is to have credibility, then it must provide mechanisms for achieving it, and those mechanisms need to be examined to see whether there really is any credibility to claims that permanent offsets can be achieved, and that governance, funding and institutions are stable. These seem improbable. There is also the question of compliance and enforcement.</p> <p>We come back again to the possibility of using offsets to rise above the baseline of existing</p>

	entitlements to provide some benefit such as better market access, but not as a basis for causing further harm.
	This submission is submitted on behalf of the ECO biodiversity, biosecurity and conservation working group, but has not been endorsed by ECO member bodies. There is a diversity of views within ECO, as there is in IUCN.
	Thanks for the opportunity to discuss this issue and Policy proposal.

1. *Do you have experience in designing, implementing and/or monitoring of biodiversity offsets?*

We have not been the prime mover but we have watched what has happened – or not happened – in several cases. Solid Energy, the failing New Zealand state owned coal company, complied with directions to protect

**GENERAL QUESTIONS:**  
*(the answers to general questions will have no impact on the consideration of your comments above)*

an endemic carnivorous snail by placing these in ice-cream boxes in a refrigerator. This may preserve the species but it is of little use ecologically. The company is failing so it will be interesting to see what becomes of these snails and the vaunted BBOP case study of Solid Energy'

*What is your geographic and or thematic area of expertise within the area of biodiversity offsets?*

ECO is the national alliance of organisations with a concern for the environment and conservation and is primarily focused on New Zealand but of course has interest in what happens elsewhere.

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2. *Do you believe that biodiversity offsets have the potential to be an appropriate conservation tool?*

We love the idea that they would help but believe that they will provide a passport to do damage to biodiversity. We consider they should only be used to enhance outcomes and not to allow damage to biodiversity.

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3. *What do you consider to be the main challenges to the effective implementation of biodiversity offsets?*

Biodiversity is inherently non-tradable, non fungible, non –substitutable, and irreplaceable.; damage will be in perpetuity.

On the policy implementation side: Short –termism, the Special Interest Effect that leads to governments allowing socially damaging activities; Regulatory capture by industry, and other government failures.

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4. *What, if any, should be the role of IUCN to facilitate the effective implementation of biodiversity offset?*

IUCN should foster further research and alternatives to biodiversity offsets.

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